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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,867	08/25/2003	Hiroaki Muramatsu	240113US0	1664

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OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.  
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ALEXANDRIA, VA 22314

EXAMINER

EGWIM, KELECHI CHIDI

ART UNIT	PAPER NUMBER
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1713

DATE MAILED: 01/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/646,867	<b>Applicant(s)</b> MURAMATSU ET AL.	
	<b>Examiner</b> Dr. Kelechi C. Egwim	<b>Art Unit</b> 1713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 November 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 17 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>020204</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group I, claims 1-16, in the reply filed on 11/03/2005, is acknowledged. The traversal is on the ground(s) that the "Examiner's assertion [of patentable distinction] does not meet the requirements ... because a mere generalization concerning the use of a different process is not evidence that the claimed denture adhesive can be used in a materially different process". This is not found persuasive because as evidenced by at least Bowen et al. (US 2004/0057908) below, the composition can be used for at least other materially different oral care applications. The requirement is still deemed proper and is therefore made FINAL.

2. Claims 17 and 18 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 1713

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-3, 9, 12, 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Hesselgren (USPN 4,339,279).

In col. 3, line 58 to col. 4, line 24 and col. 5, lines 4-8, Hesselgren teaches an adhesion type denture adhesive comprising alginate, a water soluble polymer, 10 to 50% by weight of calcium sulfate and 20 to 60% by weight of sodium carboxymethyl cellulose (also a water soluble polymer) with other additives, wherein a gel is formed through reaction of calcium sulfate with the sodium carboxymethyl cellulose.

Thus, the requirements for rejection under 35 U.S.C. 102(b) are met.

5. Claims 1-3, 9 and 12-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Lokken (USPN 4,664,630).

In col. 2, lines 55-60 and col. 3, lines 25-35, Lokken teaches an adhesion type denture adhesive comprising alginate, a water soluble polymer, 1 to 30% by weight of calcium sulfate and 20 to 80% by weight of sodium carboxymethyl cellulose (also a water soluble polymer) with other additives, wherein a gel is formed through reaction of calcium sulfate with the sodium carboxymethyl cellulose.

Thus, the requirements for rejection under 35 U.S.C. 102(b) are met.

Art Unit: 1713

6. Claims 1-5, 8, 9 and 12-15 are rejected under 35 U.S.C. 102(a) as being anticipated by Muramatsu (US 2002/0013384 or EP 1166744) and under 35 U.S.C. 102(e) as being anticipated by Muramatsu (US 2002/0013384).

In each of the references, Muramatsu teaches an adhesion type denture adhesive comprising a mixture of water-soluble polymers as the main components, such as sodium carboxymethyl cellulose and sodium polyacrylate, along with 1 to 20% by weight of calcium sulfate.

Thus, the requirements for rejection under 35 U.S.C. 102(a and e) are met.

7. Claims 1-5, 8, 9, 12 and 14-16 are rejected under 35 U.S.C. 102(a) as being anticipated by Bowen et al. (US 2004/0057908).

In ¶¶ 's 29-32 and 40, Bowen et al. teach a composition for oral application comprising a binding agent (adhesion promoter) comprising a water soluble polymer such as sodium polyacrylate, a gelling agent such as sodium carboxymethyl cellulose and about 20 to 60% by weight of an abrasive agent such as calcium sulfate, along with other additives.

Thus, the requirements for rejection under 35 U.S.C. 102(a) are met.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 1713

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 7, 10 and 11 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, 35 U.S.C. 103(a) as being unpatentable over Hesselgren or Lokken and Claims 6, 7, 10 and 11 are rejected under 35 U.S.C. 102(a or e) as anticipated by or, in the alternative, 35 U.S.C. 103(a) as being unpatentable over Muramatsu (US' or EP') or Bowen et al.

While Hesselgren, Lokken, Muramatsu or Bowen et al., above, may not expressly teach the disclosed properties of the claimed adhesive oral composition, it is reasonable that the adhesive compositions of Hesselgren, Lokken, Muramatsu or Bowen et al. would possess the presently claimed properties since the composition of the prior art are essentially the same as the claimed composition and the USPTO does not have at its disposal the tools or facilities deemed necessary to make physical determinations of the sort. In any event, an otherwise old composition is not patentable regardless of any new or unexpected properties. In re Fitzgerald et al., 619 F.2d 67, 205 USPQ 594 (CCPA 1980). See MPEP § 2112 - § 2112.02.

Even if assuming that the prior art references do not meet the requirements of 35 U.S.C. 102, it would still have been obvious to one of ordinary skill in the art, at the time the invention was made, to arrive at the same inventive composition because the disclosure of the inventive subject matter appears within the generic disclosure of the prior art.

Art Unit: 1713

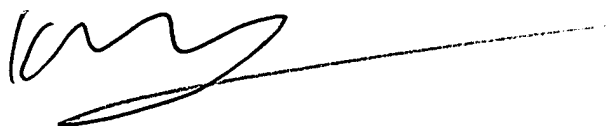
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Kelechi C. Egwim whose telephone number is (571) 272-1099. The examiner can normally be reached on M-T (7:30-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**KELECHI C. EGWIM PH.D.**  
**PRIMARY EXAMINER**

KCE

A handwritten signature in black ink, appearing to be 'KCE' followed by a stylized flourish.